

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS
NEW YORK NEW YORK 10019-6064
TELEPHONE (212) 373-3000LLOYD K GARRISON (1946-1991),
RANDOLPH E PAUL (1946-1956)
SIMON H RIFKIND (1950-1995)
LOUIS S WEISS (1927-1950)
JOHN F WHARTON (1927-1977)UNIT 5201 FORTUNE FINANCIAL CENTER
5 DONGSANHUAN ZHONGLU
CHAOYANG DISTRICT BEIJING 100020 CHINA
TELEPHONE (86-10) 5828-6300HONG KONG CLUB BUILDING, 12TH FLOOR
3A CHATER ROAD CENTRAL
HONG KONG
TELEPHONE (852) 2846-0300ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU UNITED KINGDOM
TELEPHONE (44 20) 7367 1600FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81 3) 3597-8101TORONTO-DOMINION CENTRE
77 KING STREET WEST SUITE 3100
PO BOX 226
TORONTO, ONTARIO M5K 1J3
TELEPHONE (416) 504-05202001 K STREET NW
WASHINGTON, DC 20006-1047
TELEPHONE (202) 223-7300500 DELAWARE AVENUE SUITE 200
POST OFFICE BOX 32
WILMINGTON DE 19899-0032
TELEPHONE 302/ 655-4410MATTHEW W ABBOTT
EDWARD T ACKERMAN
JACOB A ADLERSTEIN
JUSTIN ANDERSON
ALAN S ARNSTA
ROBERT A ATRINS
DAVID J BAILY
SCOTT A BARSHAY
PAUL M BASTA
JOHN R BAUMHMAN
STEVEN B BAUMHMAN
LYNN B BAYARD
CRAIG A BENSON
MITCHELL L BERG
MARK S BERGMAN
DAVID M BERNICK
DEBORA B BERNICK
BRUCE BIRENBOIM
H CHRISTOPHER BOEHNING
ANGELO BONVINO
ROBERT BRITTON
JOHN BROWN
SUSANNE BURGEL
PATRICK S CAMPBELL*
JESSICA S CAREY
DAVID CARMONA
JEANNETTE K CHAN
GEOFFREY R CHEPIGA
LEON CHIEN
WILLIAM A CLAREMAN
LEWIS R CLAYTON
YAHONNES CLEARY
JAY COHEN
KELLEY A CORNISH
ROBERT P D'ARCO J CUMMINGS
THOMAS V DE LA BASTIDE III
ARIEL J DECKELBAUM
ALICE BEISLE EATON
ANDREW J EHRLICH
GREGORY A EZRING
JEREMY A FELSTON
BRAD J FINKELSTEIN
BRIAN P FINNEGAN
ROBERTO FINZI
PETER E FISCH
HARRIS FISCHMAN
ANDREW J FISHER
ANDREW J FORMAN*
HARRIS B FREIDUS
CHRISTOPHER D FREY
MANUEL S FREY
ANDREW L GAINES
DEBORA A GAO
MICHAEL E GERTZMAN
ADAM M GIVERTZ
SALVATORE GOGLIORMELLA
NEIL GOLDMAN
MATTHEW B GOLDSTEIN
ROBERT M GONZALEZ*
CATHERINE L GOODALL
ERIC GOODISON
CHARLES H GOODE JR
ANDREW G GORDON
BRIAN S GRIEVE
JOHN GRIEVE
NICHOLAS GROOMBRIDGE
BRUCE A GUTENPLAN
ALAN S HALPERIN
CLAUDIA HAMMERMAN
BRIAN S HAMMERMAN
MICHAEL HAMMERMAN
JOHN R HUNTER
AMRAN HUSSEIN
LORETTA A IPPOLITO
JAREN JANGHORBANI
BRIAN M JANSON
JEFF JOHNSON
MEREDITH J KANEJONATHAN S KANTER
BRAD S KARP
PATRICK N KARSNITZ
JOHN C KENNEDY
BRIAN KIE
KYLE J KIMPLER
DAVID M KLEIN
ALAN W KORNBERG
DANIEL J KRAMER
DAVID J KURTZ
JOHN E LANGE
GREGORY F LAUFER
BRIAN C LAVIN
XIAOYU GREG LIU
JEFFREY D MARELL
MARCO V MASOTTI
DAVID W MAYER
ELIZABETH R MCCOLM
ALVARO MEMBRILLERA
MARK F MENDELSON
CLAUDETTE MEREDITH-GOUJON
WILLIAM B MICHAEL
JUDITH M SHOOTE*
CATHERINE NYARADY
JANE B O'BRIEN
ALEX YOUNG K OH
BRAD R ORKIN
KELLEY J PARKER
LINDA B PARKS
VALERIE E RADWAJER
JEFFREY J RECHER
CARL L REISNER
LORIN L REISNER
WALTER R RICARDI
WALTER RICHARD
RICHARD A ROSEN
ANDREW N ROSENBERG
JUSTIN ROSENBERG
JACQUELINE P RUBIN
CHARLES F RICKY RULE*
RICHARD M RODGERS
ELIZABETH M SACKSTEDE
JEFFREY D SAFERSTEIN
JEFFREY B SAMUELS
TERRY E SCHIMEN
KENNETH M SCHNEIDER
ROBERT M SCHUMER
JOHN M SCHAFFNER
BRIAN SCRIVANI
KANNON K SHANMUGAM*
DAVID R SICULAR
AUDRA J SOLOWAY
SCOTT J SONTAG
TANIA M SPERBER
ERIC ALAN STONE
AIDAN SYNNOTT
RICHARD C TARLOWE
MONICA K THURMOND
DANIEL J TOAL
CONNIE VAN ZEGGERENBERG
LIZA M VELAZQUEZ
MICHAEL VOGEL
RAMY J WAHBEH
LAWRENCE G WEE
THEODORE V WELLS JR
LINDA M WIEGEMA
STEVEN J WILLIAMS
LAWRENCE J WITDORFCH
MARK B WLALZO
JULIA TARVER MASON WOOD
JENNIFER H WU
BEATRICE YAP
JORDAN F YARETT
KAYE N YOSHINO
TONG YU
TRACEY A ZACCONE
TAURIE M ZEITZER
T ROBERT ZOCHOWSKI JR

*NOT ADMITTED TO THE NEW YORK BAR

May 31, 2019

By ECF

The Honorable Sidney H. Stein
 United States District Judge
 Daniel Patrick Moynihan United States Courthouse
 500 Pearl Street
 New York, NY 10007-1312

Re: *Sonterra Capital Master Fund Ltd., et al. v. Credit Suisse Group AG, et al.*, No. 15-CV-0871

Dear Judge Stein:

We represent Defendants Deutsche Bank AG and DB Group Services (UK) Ltd. in the above-captioned matter. We write on behalf of the Bank Defendants¹ to notify the Court of supplemental authority relevant to the Bank Defendants' pending motion to dismiss the Second Amended Complaint (Dkt. 223). The Second Circuit's recent decision in *7 West 57th Street Realty Co. v. Citigroup, Inc.*, No. 18-1102-CV, 2019 WL 1914278

¹ Bank Defendants are Credit Suisse Group AG, Credit Suisse AG, Deutsche Bank AG, DB Group Services (UK) Ltd., The Royal Bank of Scotland plc, and UBS AG.

PAUL, WEISS, RIFKIND, WHARION & GARRISON LLP

The Honorable Sidney H. Stein

2

(2d Cir. Apr. 30, 2019) (“7W57”) (attached as Exhibit A), confirms, consistent with this Court’s prior decision, that Plaintiffs who failed to allege a transaction with any Defendant—so-called “umbrella” Plaintiffs—are not efficient enforcers of the antitrust laws and thus lack antitrust standing.² The decision also supports dismissal of Plaintiffs’ RICO and CEA claims.

I. 7W57 Confirms that “Umbrella” Plaintiffs Lack Antitrust Standing Because They Are Not Efficient Enforcers.

In 7W57, plaintiff alleged that defendants’ manipulation of U.S. Dollar LIBOR affected the value of its municipal bond investments even though—like the instruments at issue here—none of the bonds directly referenced U.S. Dollar LIBOR. Moreover, like nearly all Plaintiffs here, the 7W57 plaintiff was an “umbrella” plaintiff—it had not purchased any of its bonds directly from any defendant. After carefully weighing each of the efficient-enforcer factors, the Second Circuit affirmed dismissal of plaintiff’s antitrust claims for lack of antitrust standing. Consideration of those factors here shows that Plaintiffs do not have antitrust standing to bring their claims.

First, the 7W57 panel found that the directness-of-injury factor weighed against antitrust standing in part because plaintiff’s alleged injury—a diminution in the value of its bonds—“was necessarily directly caused by the independent judgments of participants in the secondary municipal bond market.” 7W57, 2019 WL 1914278, at *2. Similarly, here, any injury to “umbrella” Plaintiffs was “necessarily directly caused” by someone other than Defendants—namely, third parties with which Plaintiffs directly transacted and/or which made independent decisions to price Swiss franc futures and FX forwards according to a formula that allegedly incorporated CHF LIBOR. The 7W57 panel also recognized “the danger of opening up antitrust liability to LIBOR contributor panel banks for injuries ‘to every plaintiff who ended up on the wrong side of an independent LIBOR-denominated derivative swap,’” which would “not only bankrupt 16 of the world’s most important financial institutions, but also vastly extend the potential scope of antitrust liability in myriad markets where derivative instruments have proliferated.” *Id.* (quoting *Gelboim v. Bank of Am. Corp.*, 823 F.3d 759, 779 (2d Cir. 2016)). As this Court has recognized, the “danger of opening up” limitless antitrust liability is present in this case as well, *see Sonterra*, 277 F. Supp. 3d at 559-60, and that danger militates against allowing “umbrella” Plaintiffs’ claims to proceed.

Second, the 7W57 panel found that there were “indisputably more direct victims” than plaintiff there. 7W57, 2019 WL 1914278, at *2. Specifically, the panel concluded that persons who transacted in financial instruments directly pegged to U.S. Dollar LIBOR were more direct victims than those, like plaintiff, “whose injury flowed

² Bank Defendants respectfully disagree with the Court’s prior conclusion that the “Direct Transaction Plaintiffs” sufficiently alleged that they were efficient enforcers of the antitrust laws. *Sonterra Capital Master Fund Ltd. v. Credit Suisse Grp. AG*, 277 F. Supp. 3d 521, 558-59 (S.D.N.Y. 2017). Bank Defendants reserve their right to advance this argument on appeal.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

The Honorable Sidney H. Stein

3

from the ripple effect LIBOR has on financial instruments that are not actually tied to LIBOR.” *Id.* Likewise, here, there are “indisputably more direct victims” than Plaintiffs: Any party that transacted in a CHF LIBOR-referencing financial instrument directly with a Defendant is a more direct victim than “umbrella” Plaintiffs that did not. *See Sonterra*, 277 F. Supp. 3d at 562 (“One could also conceive of the Direct Transaction Plaintiffs as a ‘more direct’ victim than the umbrella plaintiffs, even assuming both groups suffered the same harm from the manipulation.”).

Third, the 7W57 panel concluded that plaintiff’s damages “would be highly speculative,” in part because calculating those damages “would require speculation about how each of the 16 LIBOR panel banks would have answered the LIBOR question over the five days” at issue. 7W57, 2019 WL 1914278, at *3. This reasoning applies with far greater force here, where Plaintiffs allege years, not days, of CHF LIBOR manipulation over a decade-long class period.

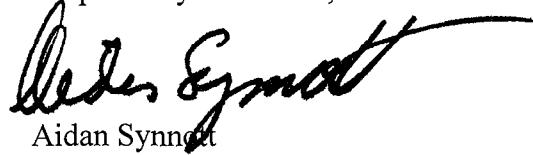
II. 7W57 Supports Dismissal of Plaintiffs’ RICO and CEA Claims.

The 7W57 panel affirmed the dismissal of plaintiff’s RICO claims for lack of causation for reasons similar to those supporting its efficient-enforcer analysis. Specifically, the panel found that “the alleged RICO-predicate fraud only indirectly caused [plaintiff’s] bond portfolio to decline in value” because “the injury was directly caused by buy/sell decisions that independent market actors made, which LIBOR may have influenced.” *Id.* at *3-4. This reasoning applies to Plaintiffs’ RICO and CEA claims here with equal force, and therefore dismissal of those claims is also required. *See* Bank Defs.’ Merits Br. (Dkt. 228) at 27-28, 32-24.

* * *

For the above reasons and those outlined in the Bank Defendants’ merits briefs, Plaintiffs’ antitrust, RICO, and CEA claims should be dismissed.

Respectfully submitted,



Aidan Synnott

cc: All counsel (via ECF)